



Parenting Arrangements and Mediation

What rights

do my children have?

- Children have a right to a meaningful relationship with **both** parents.
- Children also have a right to be protected from harm, so you don't have to agree to let your ex see the children, if you believe they might be at risk of harm.

What rights and responsibilities do parents have?

- Parents don't have 'rights', but they **DO** have 'responsibilities' towards their children.
- **'Parental Responsibility'** involves long-term decision making about education, living arrangements, religious upbringing, medical treatment, international travel etc.
- There is a presumption that **parents share parental responsibility post-separation**.
- This means you and your ex still need to discuss, and consent to, major decisions.

Do I have to agree to a shared-care arrangement if that's what my ex wants?

- No, equal shared parental responsibility does not necessarily equate to equal time.
- You should, however, consider weekend and weekday time, if there's no risk of harm.

What if my ex and me agree about parenting arrangements?

- Ideally parents should discuss, and agree upon, the following issues:
 - Where a child lives,
 - How the child 'spends time' with the other parent (How often? When? For how long?),
 - How and when the child 'communicates' with the other parent (via telephone, Skyping, e-mail etc.)
 - Practical things such as changeover, financial support, information sharing etc.
- When **parents agree** about parenting arrangements, their agreement can be either informal (written or verbal) or formal (parenting plan or consent orders).
- Informal arrangements work best where parents are flexible and communicate well.

- A **parenting plan** is your agreement in writing, which is signed and dated by both parties. It is not legally enforceable. It can be easily updated by new parenting plans.
- **Consent orders** are obtained by filing your written agreement with the Court. They are legally enforceable and you can make a contravention application if they're breached.

What if my ex and me can't agree about parenting arrangements?

- If you can't agree, you have the following 'formal' options:
 - Mediation (also known as family dispute resolution ('FDR')),
 - Lawyer assisted negotiation (via private solicitors), **or**
 - Court action (as a last resort)

What is mediation?

- A **mediator (or FDR practitioner) is a neutral third-party**, who tries to help you and your ex reach agreement by mutual compromise.
- Usually the mediator conducts a face-to-face session with both parents present.
- Parties make a joint list of issues for discussion, and the mediator will direct discussion to help you resolve the issues in dispute and (hopefully) reach an agreement.
- Mediation usually takes 2 or 3 hours, and you can have further sessions if needed.

How do I prepare for mediation?

- You should prepare a list of what you and your ex do and don't agree about, and what you need to plan for (E.g. relocation, international travel, child support, schooling etc.).
- You could also prepare a detailed proposal for future parenting arrangements.

What can we talk about at mediation?

- Parents usually discuss issues like: where children will live; Child wellbeing; How and when they'll spend time (and communicate with) the other parent; How parents will 'communicate' about children; financial support; international travel; relocation etc.

Will I need a solicitor if we go to mediation?

- You don't need a solicitor in mediation sessions, but they can attend if you have one.
- Family Relationship Centres (FRCs) can arrange for each party to have a free solicitor, in high conflict matters. This is known as legally assisted mediation (LAM). Talk to your mediator about this option, if you think it might be helpful.
- Macarthur Legal Centre (MLC) participates in LAMs at various FRCs.

- If you're eligible for Legal Aid representation, they can organise mediation **and** attend.

What if I don't feel comfortable being in the same room as my ex?

- If you don't feel comfortable being in the same room with your ex, you can ask for 'shuttle' mediation. This means that you sit in different rooms, and the mediator moves between rooms. Alternatively, it is possible to arrange 'telephone' mediations.

What happens if we come up with an agreement at mediation?

- The mediator will give you a written copy of any agreement reached in mediation.
- You can both follow the agreement on a 'goodwill' basis, or make a parenting plan, or file consent orders. You should speak to a solicitor if you'd like consent orders.

Will mediation work for all kinds of matters?

- Mediation is usually unsuitable where there's a history of family violence, or child abuse, or in 'urgent' cases (for example parental abduction matters etc.).
- The mediator will speak to each party, individually, before mediation. If they think mediation isn't appropriate, they won't proceed.
- The mediator can also stop mediations, during a session, if it's not working.
- If your attempt at mediation is unsuccessful, the mediator will issue a section 60I certificate, which will allow you (and/or the other party) to go to Court.

What happens if I get a s 60I certificate?

- If you get a s 60I certificate you can either attempt further negotiation, or go to Court.
- If you elect to go to Court you should obtain expert legal advice and representation.

Going to Court

- Going to Court should be your last option – where you and your ex really can't agree.
- If you go to Court, the Magistrate/Judge will make decisions based on the 'best interests' of your child/ren, and this may not always be what you believe is best.
- Going to Court can be costly, emotionally draining and time consuming.
- **BUT**, where matters are urgent, or in cases of family violence and/or child abuse, going to Court might be the best option. It's important to get legal advice in these cases.

- Where a child is taken from their primary carer, without agreement, it is possible to approach the Court for urgent **‘recovery orders’** (which police execute).
- Where a parent relocates with the child/ren, without agreement, it is possible to approach a Court for **‘relocation orders’**.

Where can I get legal advice and further information?

Macarthur Legal Centre – 4628 2042 (free legal advice, referrals and assistance – subject to centre guidelines we can assist with legally assisted mediations and with consent orders)

Legal Aid NSW (Campbelltown) – 4620 1199 (free advice and representation for eligible persons)

Campbelltown Police – 4620 1199 (to report family violence and child at risk matters)

Family Court of Australia (Parramatta) – 1300 352 000

(www.familycourt.gov.au)

Law Access NSW – 1300 888 529 (free telephone information)

Family and Community Services NSW – 132 111 (where a child is at risk of harm).

Who can I contact to arrange a mediation session?

Family Relationship Centre (free/low fee – parenting only) – 4629 7000)

Rachel Stubbs and Associates (fee paying* – parenting **and** property – 4655 5366)

Marsdens Law Group (fee paying* – parenting **and** property) – 4626 5077

Legal Aid NSW (Family Dispute Resolution Service) - 9219 5118 or 9219 5119.

*Fee paying mediations will usually cost about \$700 per party per session.

The above content is information only. You should seek independent legal advice about your particular circumstances.